



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA- R03-UST-2020-0205; FRL 10012-34-Region 3]

West Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of West Virginia's Underground Storage Tank (UST) program submitted by West Virginia (West Virginia or State). This action also revises the address of EPA's Region 3 office. This action also codifies EPA's approval of West Virginia's state program and incorporates by reference (IBR) those provisions of West Virginia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives any significant negative comment opposing this action by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives any significant negative comment opposing this action, EPA will publish a timely withdrawal in the **Federal Register**

informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* uybarreta.thomas@epa.gov.

3. *Mail:* Thomas UyBarreta, RCRA Programs Branch, Land, Chemicals and Redevelopment Division, EPA Region 3, 1650 Arch Street, (Mail Code 3LD30), Philadelphia, PA 19103-2029.

Instructions: Direct your comments to Docket ID No. EPA-R03-UST-2020-0205. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or e-mail. The federal website, <https://www.regulations.gov>, is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that

you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814-2953, uybarreta.thomas@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (3LD30), Philadelphia PA 19103-2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to West Virginia’s Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a),

42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is “no less stringent” than the federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as West Virginia that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling federal or state statutory or regulatory authority is changed and EPA determines revision is required. In 2015, EPA revised the federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On June 24, 2018, in accordance with 40 CFR 281.51(a), West Virginia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). West Virginia’s revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State’s procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General’s statement in accordance with 40 CFR 281.24 certifying to applicable state authorities; and copies of all relevant state statutes and regulations. EPA has reviewed the State Application and determined that the revisions to West Virginia’s UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281 because West Virginia has adopted almost all of the federal requirements by reference. In addition, EPA has determined that the West

Virginia program provides for adequate enforcement of compliance (40 CFR 281.11(b)).

Therefore, EPA grants West Virginia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this document.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in West Virginia, and they are not changed by this action. This action merely approves the existing State regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because we view this as a noncontroversial action and anticipate no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the “Proposed Rules” Section of this **Federal Register** that serves as the proposal to approve the State’s UST program revisions, providing opportunity for public comment. If EPA receives any significant negative comment opposing this approval, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has West Virginia previously been approved?

On September 23, 1997, EPA finalized a rule approving West Virginia's UST program, effective February 10, 1998, to operate in lieu of the federal program. On June 15, 2004 (69 FR 33312, June 15, 2004), EPA codified the approved West Virginia program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is EPA approving with this action?

On June 24, 2018, in accordance with 40 CFR 281.51(a), West Virginia submitted a complete application for final approval of its UST program revisions adopted on June 1, 2018. The State of West Virginia has amended its Code of State Rules (CSR) to incorporate by reference (into the West Virginia regulations at 33CSR30) the requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions, except for 40 CFR 280.20(c), 280.22, 280.34(a)(1), 280.251(b), the definition of "implementing agency," the citation to section 9005 of RCRA in 280.34, and appendices I, II and III of 40 CFR part 280. EPA has reviewed West Virginia's requirements and determined that West Virginia's requirements are no less stringent than the federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. EPA now makes an immediate final decision, subject to receipt of any significant negative written comment opposing this action, that West Virginia's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants West Virginia final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	33CSR30-2.1, 33CSR30-3, 33CSR30-4

40 CFR 281.31, Upgrading Existing UST Systems	33CSR30-2.1
40 CFR 281.32, General Operating Requirements	33CSR30-2.1
40 CFR 281.33, Release Detection	33CSR30-2.1
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	33CSR30-2.1
40 CFR 281.35, Release Response and Corrective Action	33CSR30-2.1
40 CFR 281.36, Out-of-service Systems and Closure	33CSR30-2.1
40 CFR 281.37, Financial Responsibility for UST systems Containing Petroleum	33CSR30-2.1
40 CFR 281.38, Lender Liability	33CSR30-2.1
40 CFR 281.39, Operator Training	33CSR30-2.1

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The State's lead implementing agency, the West Virginia Department of Environmental Protection, has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory and regulatory authorities are found in the West Virginia Code at sections 22-17-13, 22-17-15, 22-17-16, 22-17-17, 22-17-18, and in the West Virginia regulations at 33CSR30-5.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following West Virginia requirements are considered "broader in scope" than the federal program. In accordance with 40 CFR 281.12(a)(3)(ii), this additional coverage is not part of the federally-approved program and is not federally enforceable:

West Virginia requires, at 33CSR30-3, that individuals who install, repair, retrofit, upgrade, perform change-in-service, close, or tightness test UST systems or install, repair,

upgrade or test corrosion protection on UST systems be certified. The requirement that installers be certified is no less stringent than the federal requirements, and is therefore part of the federally-approved program. With respect to others who are required to be certified, the West Virginia requirements are broader in scope. Additionally, fees are required to be paid for the certifications, and such fee requirements go beyond the scope of the federal program. The fees required under 33CSR31 (Underground Storage Tank Fee Assessments) are also broader in scope. The additional operator training requirements at 33CSR30-6.1 (Approval of Required Training) are broader in scope and therefore not a part of the federally-approved program.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of West Virginia's UST program?

EPA incorporated by reference West Virginia's approved UST program effective June 15, 2004 (69 FR 33312, June 15, 2004). In this document, EPA is revising 40 CFR 282.98 to include the approved revisions.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the West Virginia statutes and regulations described in the amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 3 office (see the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

One purpose of this **Federal Register** document is to codify West Virginia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the West Virginia UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rule then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. The document incorporates by reference West Virginia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved West Virginia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the West Virginia program.

EPA is incorporating by reference the West Virginia approved UST program in 40 CFR 282.98. Section 282.98(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.98 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of

Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of West Virginia's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in West Virginia, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved West Virginia procedural and enforcement authorities. Section 282.98(d)(1)(ii) of 40 CFR lists those approved West Virginia authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program. As a result, State provisions that are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.98(d)(1)(iii) lists for reference and clarity the West Virginia statutory and regulatory provisions that are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are "broader in scope" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to West Virginia's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review.

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of West Virginia's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). Currently there are no federally recognized tribes in West Virginia. Therefore, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular

voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules that are no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective [***INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER***] because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental

relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Water pollution control, Water supply, Underground storage tanks.

Cosmo Servidio,
Regional Administrator,
EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.2(b)(3) to read as follows:

§282.2 Incorporation by reference.

* * * * *

(b) * * *

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 1650 Arch Street, Philadelphia, PA 19103-2029.

3. Revise § 282.98 to read as follows:

§ 282.98 West Virginia State-Administered Program.

(a) The State of West Virginia is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource

Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the West Virginia Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the West Virginia underground storage tank program on September 23, 1997, and approval was effective on February 10, 1998. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

(b) West Virginia has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, West Virginia must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If West Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) West Virginia has final approval for the following elements of its program application originally submitted to EPA and approved on September 23, 1997 and effective February 10, 1998, and the program revision application approved by EPA, effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(1) *State statutes and regulations.-- (i) Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain copies of the West Virginia regulations and statutes that are incorporated by reference in this paragraph from Terry Fletcher, Acting Communications Director, West Virginia Department of Environmental Protection, 601 57th St SE, Charleston, WV 25304; Phone number: 304-926-0499 ext 49720; email address, DEPPIOEmployees@wv.gov; Hours: Monday-Friday, 7:00 a.m. to 3:30 p.m.. You may inspect all approved material at the EPA Region 3 office, 1650 Arch Street, Philadelphia, PA 19103-2029 (Phone number: 215-814-2953); or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email fedreg.legal@nara.gov or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) West Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, June 2011.

(B) West Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but they are not being incorporated by reference for enforcement purposes and do not replace federal authorities:

(A) The statutory provisions include:

(I) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22-17-5 Powers and duties of director; integration with other acts

Section 22-17-6 Promulgation of rules and standards by director, § 22-17-6.(b)(13)

Section 22-17-12 Confidentiality, § 22-17-12.(b)

Section 22-17-13 Inspections, monitoring, and testing

Section 22-17-15 Administrative orders; injunctive relief; requests for reconsideration

Section 22-17-16 Civil penalties

Section 22-17-17 Public participation

Section 22-17-18 Appeal to environmental quality board

Section 22-17-23 Duplicative enforcement prohibited

(2) Code of West Virginia, Chapter 22, Article 1: Department of Environmental Protection

Section 22-1-2 Definitions

(B) The regulatory provisions include:

(I) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30:

Underground Storage Tanks

Section 33-30-5 Delivery Prohibition

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are “broader in scope” than the federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(I) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22-17-6 Promulgation of rules and standards by director, § 22-17-6.(b)(12)(except as to installation)

Section 22-17-7 Underground storage tank advisory committee; purpose

Section 22-17-19 Disclosures required in deeds and leases

Section 22-17-20 Appropriation of funds; underground storage tank administrative fund

Section 22-17-21 Leaking underground storage tank response fund

(2) [Reserved]

(B) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30:

Underground Storage Tanks

Section 33-30-3 Certification Requirements for Individuals who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems (except as to Individuals who Install)

Section 33-30-6 Operator Training Requirements.

(2) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 31: Underground Storage Tank Fee Assessments

(2) *Statement of Legal Authority*. “Attorney General’s Statement”, signed by the Acting General Counsel, Chief of the Office of Legal Services, West Virginia Department of Environmental Protection, on June 8, 2017, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of Procedures for Adequate Enforcement*. The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the program revision application on June 24, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the program revision application on June 24, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and the West Virginia Department of Environmental Protection, signed by the EPA Regional Administrator on July 8, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

4. Appendix A to part 282 is amended by revising the entry for West Virginia to read as follows:

APPENDIX A TO PART 282—STATE REQUIREMENTS INCORPORATED BY REFERENCE IN PART 282 OF THE CODE OF FEDERAL REGULATIONS

* * * * *

West Virginia

(a) The statutory provisions include:

(1) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22-17-1 Short title

Section 22-17-2 Declaration of policy and purpose

Section 22-17-3 Definitions

Section 22-17-4 Designation of division of environmental protection as the state underground storage tank program lead agency

Section 22-17-6 Promulgation of rules and standards by director, except § 22.17-6.(b)(12)(except as to installation) and (b)(13)

Section 22-17-8 Notification requirements

Section 22-17-9 Registration requirements; undertaking activities without registration

Section 22-17-10 Financial responsibility

Section 22-17-11 Performance standards for new underground storage tanks

Section 22-17-12 Confidentiality, except § 22-17-12.(b)

Section 22-17-14 Corrective action for underground petroleum storage tanks

Section 22-17-22 Underground storage tank insurance fund

(b) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30:

Underground Storage Tanks

Section 33-30-1 General

Section 33-30-2 Adoption of Federal Regulations

Section 33-30-3 Certification Requirements for Individuals Who Install, Repair, Retrofit,

Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank

Systems or Install, Repair, Upgrade or Test Corrosion Protection on Underground Storage Tank

Systems (as to Individuals Who Install)

Section 33-30-4 Notification Requirements

Notification for Underground Storage Tanks, revised 2/2018